

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON APPROPRIATIONS**

**Call to Order:** By **CHAIRMAN DAVE LEWIS**, on March 14, 2003 at 8:00 A.M., in Room 102 Capitol.

#### **ROLL CALL**

##### **Members Present:**

Rep. Dave Lewis, Chairman (R)  
Rep. Rosalie (Rosie) Buzzas, Vice Chairman (D)  
Rep. Edith Clark, Vice Chairman (R)  
Rep. John Brueggeman (R)  
Rep. Tim Callahan (D)  
Rep. Stanley (Stan) Fisher (R)  
Rep. Eve Franklin (D)  
Rep. Dick Haines (R)  
Rep. Donald L. Hedges (R)  
Rep. Joey Jayne (D)  
Rep. Carol C. Juneau (D)  
Rep. Dave Kasten (R)  
Rep. Christine Kaufmann (D)  
Rep. Monica Lindeen (D)  
Rep. John Musgrove (D)  
Rep. Jeff Pattison (R)  
Rep. Rick Ripley (R)  
Rep. John Sinrud (R)  
Rep. John Witt (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Jon Moe, Legislative Branch  
Mary Lou Schmitz, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

##### **Committee Business Summary:**

Hearing & Date Posted: HB 685, HB 687, HB 701, HB 726, HB  
741, HB 750, 3/7/2003  
Executive Action: HB 602, HB 604, HB 722

**HEARING ON HB 687**

**Sponsor:** REP. BRAD NEWMAN, HD 38, Butte

**Opening Statement by Sponsor:**

**REP. NEWMAN** said this is a bill dealing with the issue of retirement benefits for Montana Highway Patrol Officers who have been disabled as a result of their active duty as Highway Patrol officers. An amendment was placed on the bill in House Administration which ties the funding of this bill to HB 206 which is a bill that has been through the House sponsored by REP. YOUNKIN. That bill is now in the Senate.

This bill proposes to raise the percentage of the disability benefit, Line 16 of the bill, from 50% to 80% of the officer's wage.

**Proponents' Testimony:**

**REP. JILL COHENOUR, HD 51, East Helena,** spoke in favor of the bill.

**Steve Athearn, Montana Highway Patrol** retiree as a result of an injury while on duty.

**Bob Holmes, Chaplain, Lewis and Clark County Sheriff's Department and Helena Police Department,** encouraged the committee to support this bill.

**Tom Butler, Sargeant, Montana Highway Patrol, Exhibit 1.**  
**EXHIBIT**(aph54a01)

**Tom Schneider, Montana Public Employees Association,** said, "In 1955 state employees in Montana elected to join Social Security. That was the year public employees were given the right to vote into Social Security but at that time the Social Security law specifically prohibited the Montana Highway Patrol, the firefighters, and the city police officers from Social Security coverage. That continued until the middle 1970s. At that time the law was changed and they could vote in, except for the firefighters who still cannot vote into the Social Security system. It is not a case that these officers chose in 1955, not to be in Social Security, they simply were forbidden Social Security coverage at that time. Today, they can vote into Social Security. However, this bill is a cheaper way to do it. It does take care of the problem."

**Mark Taylor, Association of Montana Highway Patrolmen**, stood in support of HB 687 and is available for questions.

**Galen Hollenbaugh, Deputy Chief of Staff, Department of Justice**, said the Attorney General supports this bill and urged the committee to give a Do Pass recommendation.

**Pat Clinch, President, Montana State Council of Professional Firefighters**, asked the committee to put a resolution forward, if this bill does or does not pass, to look at all of the protective services' retirement systems.

**Opponents' Testimony:**

**Kelly Jenkins, General Counsel, Montana Public Employment Retirement Board** read testimony from Exhibits 2, 3 and 4.

**EXHIBIT** (aph54a02)

**EXHIBIT** (aph54a03)

**EXHIBIT** (aph54a04)

*{Tape: 1; Side: A; Approx. Time Counter: 0 - 29.5}*

**Terry Teichrow, Board Member, Public Employees Retirement Board.**

**Informational Testimony:** None

**Questions from Committee Members and Responses:** None

**Closing by Sponsor:**

**REP. NEWMAN** closed the hearing on HB 687.

**HEARING ON HB 701**

**Sponsor:** REP. BRAD NEWMAN, HD 38, Butte

**Opening Statement by Sponsor:**

**REP. NEWMAN** said this bill is designed to try to remedy a situation encountered in the hiring and recruitment of personal staff, not only for the Clerk of the Montana Supreme Court, but also for district judges. Elected officials are entitled, under State law, to hire a personal staff and not go through the recruitment, hiring and advertising process set by State statute. The reason for that is, as a matter of public policy, elected officials ought to be able to have one or more confidential and

trusted assistants to assist them in their daily work. This is done for legislative leaders, but not for the judicial system.

**Proponents' Testimony:** None

**Opponents' Testimony:** None

**Informational Testimony:**

**Beth McLaughlin, Human Resources Director, Judicial Branch and Montana Supreme Court** said the Supreme Court has not taken a position on this bill but she is available for questions.

**Questions from Committee Members and Responses:**

**CHAIRMAN LEWIS** said he felt they should not be able to set salaries. He asked Ms. McLaughlin if she could write an amendment to accomplish that or work with REP. NEWMAN. **Ms. McLaughlin** said she would be willing to do that but would first check with the Chief Justice.

In response to a question from **REP. HEDGES**, **Ms. McLaughlin** said one of the problems is, two or three judges will share the same staff.

**Closing by Sponsor:**

**REP. NEWMAN** closed the hearing on HB 701.

#### **HEARING ON HB 685**

**Sponsor:** **REP. SCOTT MENDENHALL, HD 39, Jefferson County**

**Opening Statement by Sponsor:**

**REP. MENDENHALL** said this bill allows the school district to count students in the Child-Care Agency, residential treatment center (Alternative Youth Adventures) in their Average Number Belonging (ANB) count. These children are adjudicated by the youth courts and have some severe emotional problems in the treatment center. They shouldn't be enrolled in the high school and have not been counted in the ANB count.

**{Tape: 1; Side: B; Approx. Time Counter: 0 - 29.6}**

**REP. MENDENHALL** passed around amendment HB068502.ace, Exhibit 5, which changes some language.

**EXHIBIT (aph54a05)**

**Proponents' Testimony:**

**Kimberly Gardner, Administrator, Alternative Youth Adventures, (AYA)** said the situation they are in is that they are a mental health center and they provide a variety of therapeutic living services. As the money has been shrinking for mental health and human services, they are no longer allowed to use their funding to pay for the teachers. They worked with OPI to come up with an impressive arrangement. It was clear that Jefferson High School did not want these children in the hallways. The children cannot manage their behavior and emotions well enough to handle themselves in a regular classroom. She felt, and so did Jefferson High School, that there was an over-abundance of the number of children at capacity(65 children), and that would over-burden the small Jefferson High School.

**Ms. Gardner** said they received a grant from OPI to get them through this year and then wrote a collaborative agreement. Right now, Jefferson High School, with the grant, is able to reimburse AYA 49% of the teachers' salaries. They provide oversight to assure AYA is meeting the State's standards and accreditation. In exchange, AYA gets to keep the children on their campus in their educational center and pay 51% of the salaries, all the benefits and the cost of the facility. This bill was written to perpetuate the agreement.

**Rayelynn Connole, Program Director and former Teacher, AYA.**

**George Lithicum, Superintendent, Jefferson High School District** appeared as a proponent and an informational witness.

**Marti Wangen, Lobbyist, Montana Psychological Association.**

**Opponents' Testimony:**

**Madalyn Quinlan, Chief of Staff, Office of Public Instruction,** handed out and explained an amendment, HB068503.ace, Exhibit 6. With the amendment, the fiscal note would basically drop to zero. Current law does allow a public school district to provide educational services in a private or alternative setting as long as the public school district is overseeing that education and the teachers could provide services on a full-time or part-time basis to those students.

**EXHIBIT (aph54a06)**

**Eric Feaver, MEA/MFT**, said they opposed the closure of Mountain View School for girls.

**{Tape: 2; Side: A; Approx. Time Counter: 0 - 29.6}**

**Mr. Feaver** said AYA does not fit into the category of private institutions becoming licensed to provide services for which the state may provide funding. Even though AYA may be the only facility now that provides, or fits into the characterization of this bill, it will not be the last if this bill is passed. There will be other enterprising entrepreneurs that look upon the disadvantages of some students, will feel they can make some money and the state will pay them. This does have a fiscal note as it is presented and it will get bigger. The amendment is absolutely necessary if the bill is passed.

These students are residents of Jefferson County and it is the county's obligation to meet their needs.

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REP. CALLAHAN** asked Ms. Gardner what impact amendment HB068503.ace would have from her perspective. **Ms. Gardner** said if the teachers become full employees of the district receiving the ANB funds, then their facility would have to change their treatment.

**REP. CALLAHAN** asked Ms. Quinlan if there are any similar kinds of models around the state and what do other residential facilities do in terms of education and how are they funded. **Ms. Quinlan** referred the question to Bob Runkel, Administrator, Special Education, OPI. **Mr. Runkel** said there are four facilities that are funded by public money. Children who are at the Yellowstone Treatment Center, Shodair Children's Hospital, Kids Behavioral Health, formerly known as CCS, and Intermountain Children's Home. The structure that prompted that funding and the system, has been in place for eight or ten years. The Office of Public Instruction (OPI) contracts with those facilities to provide for their education. The numbers of children they actually pay for are relatively small because the definition defines them as the group of facilities that are Medicaid eligible for residential care. Medicaid eligible for residential care means that Medicaid reimburses the education costs while the child is Medicaid eligible and meets medical necessity criteria. So the amount of funding they have that pays for education costs are only those children, who for a time, may not be meeting medical necessity

criteria or have lost their Medicaid eligibility. There is a parallel situation for psychiatric residential facilities.

**REPS. KASTEN, HEDGES, and JAYNE** referred questions to Mr. Runkel and Ms. Gardner for further explanation.

**Closing by Sponsor:**

**REP. MENDENHALL** closed the hearing on HB 685.

**HEARING ON HB 750**

**Sponsor:** **REP. ROY BROWN, HD 14, Billings**

**Opening Statement by Sponsor:**

**REP. BROWN** read testimony from Exhibit 7.  
**EXHIBIT** (aph54a07)

*{Tape: 2; Side: B; Approx. Time Counter: 0 - 29.6}*

**Proponents' Testimony:**

**GOVERNOR JUDY MARTZ, Governor of Montana**, expressed her thanks to **REP. BROWN** and those who worked so hard to create this compromised bill. Because she has strongly stood against tax increases, it would take a very unique situation for her to lend her support to any tax increase. She supports HB 750 because she believes they are faced with an incredibly challenging budget situation. Full support of the Democrats and Republicans is needed to balance the budget through the Coal Trust Fund alone. This is a long-term solution to a short-term problem.

**Will Hammerquist, representing associated students, Montana State University, Bozeman**, stood in support of the bill and asked the committee to keep the students in mind as it makes its considerations.

**Tom Figarelle, Forward, Montana**, also spoke in favor of keeping tuition fees down for the students in the University system.

**Gail Gray, Director, Department of Public Health and Human Services**, said this bill is about two things: 1) compromise, and 2) funding for needed services; and encouraged a Do Pass.

**Bill Slaughter, Director, Department of Corrections**, said his department, because of the work of this committee, is about \$6.6

million short of the Governor's budget. A balance needs to be struck between schools, health services and public safety.

**Rose Hughes, Executive Director, Montana Health Care Association,** said this seems to be the forum to talk about the issues and urged the committee to help the institutions she represents.

**Steve Yeakel, Montana Council for Maternal and Child Health, and three other service providers.** He said this bill is not "the" answer but he does see it as a valuable part of the answer. He asked the committee to support HB 750.

**Mike Foster, representing Sisters of Charities' Hospitals in Montana.**

**John Flink, Montana Hospital Association.**

*{Tape: 3; Side: A; Approx. Time Counter: 0 - 29.1}*

**Wally Melcher, Montana Association of Disability Services, (MAIDS) and the Montana Association for Rehabilitation.**

**Jani McCall, Deaconess Billings Clinic, Montana Children's Initiative, Montana Association of Independent Disabilities Services, Systems' Advocacy, and YMCAs of Montana.**

**Marti Wangen, Montana Psychological Association.**

**Sylvia Davenport, Montana Association of Independent Disability Services.**

**Al Davis, Montana Mental Health Association.**

**Russ Ritter, Montanans for Responsible Energy.**

**EXHIBIT (aph54a08)**

**EXHIBIT (aph54a09)** (Exhibits 8 and 9 given to Secretary.)

**Opponents' Testimony:**

**Verner Bertelsen, Montana Senior Citizens' Association.**

**Don Judge, Teamster's Local 190.**

**Jerome Anderson, R. J. Reynolds Tobacco Co.**

**Pat Callbeck Harper, Associate State Director for AARP, Montana.**



**EXHIBIT**(aph54a10)

*{Tape: 3; Side: B; Approx. Time Counter: 0 - 29.3}*

Gene Fenderson, Montana Progressive Labor Caucus.

Betty Beverley, Executive Director, Montana Senior Citizens' Association.

Bob Holmes, Minister, Helena.

Mark Staples, Montana Wholesale Distributors.

Amie Gmolyz, Philip Morris Tobacco Co.

Informational Testimony:

Kathy McGowan, Protect Montana Kids.org which is a coalition of Heart, Lung and Cancer.

Chuck Swysgood, Director, Office of Budget and Program Planning. offered to answer any questions the committee might have.

Lee Baerlocher, Department of Revenue, also available for questions.

**EXHIBIT**(aph54a11) given to Secretary.

Questions from Committee Members and Responses:

In response to a question from **REP. HEDGES**, **REP. BROWN** said the purpose of this bill is to give this committee the opportunity to reverse some of its changes that were made earlier.

**REP. CALLAHAN** referred to the technical notes in the fiscal note which indicate the sponsor doesn't specify which funds the money will come from and who makes the decision. **REP. BROWN** said he received the fiscal note about ten minutes before the hearing and that is why he didn't sign it. There will be some amendments to change those problems.

**REP. KASTEN** said last session the budget was increased over \$906 million and after the special session there was a sunset put on that amount. This looks like another sunset. **Ms. McGowan** said the tobacco tax is not a revenue issue but a health issue so in order to sustain, over time, a decline in tobacco use, a tobacco tax must be in kept in place.

**{Tape: 4; Side: A; Approx. Time Counter: 0 - 29.5}**

In response to a question from **REP. RIPLEY** concerning the Coal Trust Fund, **REP. BROWN** said there are \$32 million that go into the Trust every biennium. In this particular bill he is taking \$29 million out of the Trust. He sees it as a diversion of part of the flow that is going into the Trust. The Trust itself will continue providing all of the money that it does for the General Fund except for the additional portion that would have been there from the \$29 million.

**REP. HAINES** asked if there are other bills that could be incorporated into this. **REP. BROWN** said he has given an amendment to Jon Moe, Legislative Fiscal Division, Staffer for the committee, to incorporate some amendments that have to do with this transition that have been in other cigarette tax bills to help solve that problem.

In answer to a question from **REP. KAUFMANN**, **REP. BROWN** said he would not say that any sort of changes to this bill would not be acceptable. If there are amendments that would make it more palatable, to both Republicans and Democrats, to get this bill passed, then he thinks everything is on the table.

**REP. KAUFMANN** said she wondered if there was a technical difficulty with structuring the money coming out of the Trust as a loan. **REP. BROWN** said there is a constitutional problem if it is structured as a loan which is used to pay their shortfalls in appropriations. He has been having discussions with the code commissioner to see if there is a way that that can be done. It is a possibility.

**REP. BROWN** said they are going to debate the revenue estimates today on the floor. All of the projections he has seen, show that they are in balance in the year 2005 with the expenses and revenues. Assuming many of the cuts that have been made over the past, in special session and continue on, they are in a better balance as far as expenses go and a better situation to handle these problems.

**REPS. BUZZAS, FRANKLIN, LINDEEN, WITT**, asked for further clarification from **REP. BROWN** and then commented.

**Closing by Sponsor:**

**REP. BROWN** closed the hearing on HB 750.

**{Tape: 4; Side: B; Approx. Time Counter: 0 - 29.2}**

**CHAIRMAN LEWIS** announced the committee would be in recess until adjournment of the House.

**VICE CHAIR BUZZAS** presided at this time.

**HEARING ON HB 741**

**Sponsor:** REP. MONICA LINDEEN, HD 7, Huntley

**Opening Statement by Sponsor:**

**REP. LINDEEN** said this bill statutorily establishes the Montana Consensus Council. This Council was created by executive order under Governor Marc Racicot in 1993. For the past nine years the Consensus Council has been attached to the office of the Governor for administrative purposes. The Council has been governed by a Board of Directors which is also appointed by the Governor and staffed by a full-time executive director, two half-time project coordinators and several consultants. During recent years the Council's annual budget was \$250,000, some of that coming from the state General Fund but the majority coming from Grant money and fees for service. She handed out and explained Exhibit 12.

**EXHIBIT**(aph54a12)

**Proponents' Testimony:**

**Lt. Governor Karl Ohs** said it has been the wish of the Board from the very beginning to find a place away from the Governor's office. It is time for that to happen. He feels the way to institutionalize the process is to move it to the Department of Administration.

**Opponents' Testimony:** None

**Informational Testimony:**

**Matt McKinney, Director, Montana Consensus Council**, said he would be available to answer questions.

**Questions from Committee Members and Responses:**

**REP. HAINES** asked if there is an ultimate point of responsibility in state government that answers for what this Council does. **Lt. Governor Ohs** said that ultimately the legislature and the issues he has been involved with, the sticky issues no one can come to an agreement on, and through that process generally an agreement is made. Sometimes issues are on the local government nature and then the local jurisdiction should be the one responsible. **Mr.**

**McKinney** said they receive requests for getting involved in projects from the legislature, various state agencies, local and federal agencies, as well as citizens interest groups. They run that through a system to make sure the right people are at the table, that they have the right information, and that there is some hope of good faith. For the process to work, the Consensus Council and the groups they work with, should have a certain sense of independence and impartiality.

**REPS. KASTEN, MUSGROVE and LINDEEN** discussed the issue further and commented.

**Closing by Sponsor:**

**REP. LINDEEN** closed the hearing on HB 741.

**HEARING ON HB 726**

**Sponsor:** **REP. CHRISTINE KAUFMANN, HD 53, Helena**

**Opening Statement by Sponsor:**

**REP. KAUFMANN** opened the hearing by handing out a revised fiscal note for the committee to study, Exhibit 13.

**EXHIBIT (aph54a13)**

**REP. KAUFMANN** said the purpose of this bill is to extend Medicaid health benefits to foster children from age 18 to 21. The federal government passed the Chaffee Foster Care Independence Act in 1999 which allows the state to extend Medicaid coverage up to age 21 for foster children. The state's cost is around \$55,000 and would be matched 3 to 1.

Each year 60 or 70 children are wards of the state and are the state's responsibility.

***{Tape: 5; Side: A; Approx. Time Counter: 0 - 31}***

**Proponents' Testimony:**

**Fred Fisher, Casey Family Programs, Helena** read testimony from Exhibit 14. **Mr. Fisher** said **Jani McCall, Montana Children's Initiative; Chris Christaens; and Steve Yeakel, Maternal Health Care Association**, asked to be proponents.

**EXHIBIT (aph54a14)**

**Opponents' Testimony:** None

**Informational Testimony:**

Dave Thorsen, Child and Family Services Division is available to answer questions.

**Questions from Committee Members and Responses:**

In response to a question from REP. HEDGES, Mr. Thorsen said there are those young people who would probably have an adult qualifying diagnosis that would make them automatically qualify for Medicaid because of a disabling condition. This particular piece of legislation enables the state to allow foster kids to be covered through age 21.

**Closing by Sponsor:**

REP. KAUFMANN said she is trying to continue Medicaid coverage for children who have already been covered under the foster care system which is the system for abused and neglected children. That is why "abuse or neglect" appear in every line and she wants to continue that coverage up to age 21.

**EXECUTIVE ACTION ON HB 602**

**Motion:** REP. FRANKLIN moved that HB 602 DO PASS.

**Motion:** REP. FRANKLIN moved that HB 602 BE AMENDED, HB060202.ajm, Exhibit 15.  
**EXHIBIT**(aph54a15)

**Discussion:**

John Blacker, Administrator, Maintenance Division, Department of Transportation, said both the Governor's budget office and he has worked with the sponsor, REP. KATHLEEN GALVIN-HALCRO, to make it work for all of them. They thought they should get some better controls with guidelines associated with people taking vehicles.

**Vote:** Motion on amendment HB060202.ajm carried unanimously 19-0 on a voice vote.

**Motion/Vote:** REP. FRANKLIN moved that HB 602 DO PASS AS AMENDED. Motion carried unanimously 19-0 on a voice vote.

**EXECUTIVE ACTION ON HB 604**

**Motion:** REP. BUZZAS moved that HB 604 DO PASS.

**Motion:** REP. PATTISON moved that HB 604 BE AMENDED,  
HB060401.aem., Exhibit 16  
**EXHIBIT**(aph54a16)

**Discussion:**

REP. PATTISON explained the amendment, Exhibit 16.

REP. BUZZAS spoke against the amendment.

REPS. FRANKLIN, FISHER, HEDGES, PATTISON, KASTEN, and LINDEEN discussed the amendment at length, for and against.

*{Tape: 5; Side: B; Approx. Time Counter: 0 - 30.5}*

Jim Standaert, Legislative Fiscal Division, said the way the amendment would work is, the excess money would go back only to those districts in which the oil or gas was produced. All they are doing is adding to the current system.

REPS. SINRUD, and BUZZAS, asked for further clarification from Mr. Standaert.

**Vote:** Motion failed 7 to 12 with REPS. LEWIS, CLARK, KASTEN, LINDEEN, PATTISON, SINRUD and WITT VOTING YES on a roll call vote.

**Motion:** REP. FISHER moved that HB 604 BE CONCEPTUALLY AMENDED TO CAP THE FUND AT \$6 MILLION.

**Discussion:**

REPS. KAUFMANN, HEDGES, FISHER, BUZZAS, WITT, MUSGROVE and RIPLEY referred questions to CHAIRMAN LEWIS and Mr. Standaert for clarification,

**Vote:** Motion for conceptual amendment carried 10-9 with REPS. CALLAHAN, FRANKLIN, JAYNE, JUNEAU, KAUFMANN, LINDEEN, MUSGROVE, RIPLEY and SINRUD voting no on a roll call vote.

Substitute Motion/Vote: REP. KASTEN made a substitute motion that HB 604 BE TABLED. Motion failed 2-17 with REPS. KASTEN and PATTISON voting yes on a roll call vote.

Vote: Motion HB 604 DO PASS AS AMENDED carried on a reverse vote 17-2 with REPS. KASTEN and PATTISON voting no.

*{Tape: 6; Side: A; Approx. Time Counter: 0 - 29.2}*

EXECUTIVE ACTION ON HB 628

Motion: REP. KASTEN moved that HB 628 DO PASS.

Motion: REP. KASTEN moved that HB 628 BE CONCEPTUALLY AMENDED, HB062802.amv, Exhibit 17.

**EXHIBIT**(aph54a17)

Following a brief discussion, REP. KASTEN withdrew the motions.

EXECUTIVE ACTION ON HB 722

Motion: REP. PATTISON moved that HB 722 DO PASS.

Motion/Vote: REP. LEWIS moved that HB 722 BE AMENDED, HB072201.asb. Motion carried unanimously 19-0 on a voice vote.

**EXHIBIT**(aph54a18)

Motion/Vote: REP. LEWIS moved that HB 722 BE AMENDED, HB072201.ajm. Motion carried unanimously 19-0 on a voice vote.

**EXHIBIT**(aph54a19)

Motion/Vote: REP. PATTISON moved that HB 722 DO PASS AS AMENDED. Motion carried unanimously 19-0 on a voice vote.

*{Tape: 6; Side: B; Approx. Time Counter: 0 - 8.5}*

**ADJOURNMENT**

Adjournment: 5:05 P.M.

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REP. DAVE LEWIS, Chairman

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MARY LOU SCHMITZ, Secretary

DL/MS

**EXHIBIT** (aph54aad)